UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF The Dodge Company, Inc. 165 and 181 Cambridge Park Drive Cambridge, MA 02140 Proceeding under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d); and Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11045(c)	Docket Nos: CAA-HQ-2013-5012 EPCRA-HQ-2013-5012 **CONSENT AGREEMENT AND FINAL ORDER**

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CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency ("EPA" or "Complainant") and The Dodge Company, Inc. ("Dodge" or "Respondent") consent to the entry of this Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. § 22.13(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination, or Suspension of Permits, 40 C.F.R. Part 22 ("Consolidated Rules of Practice"). This CAFO resolves Respondent's liability for alleged violations of (a) the chemical accident prevention provisions of Section 112(r)(7) of the Clean Air Act ("CAA"), 42 U.S.C. § 7412(r)(7), and implementing federal regulations found at 40 C.F.R. Part 68; and (b) the chemical inventory reporting requirements of Section 312(a) of the Emergency Preparedness and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11022(a), and its implementing regulations, found at 40 C.F.R. Part 370.

EPA and Respondent agree to settle this matter through this CAFO without the filing of an administrative complaint, as authorized under 40 C.F.R. § 22.13(b) and 22.18(b). EPA and Respondent agree that settlement of this cause of action is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

NOW, THEREFORE, before taking any testimony, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

I. PRELIMINARY STATEMENT

1. This CAFO both initiates and resolves an administrative action for the assessment of monetary penalties, pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and Section

325(c) of EPCRA. As more thoroughly discussed in Sections III and IV below, the CAFO resolves the following CAA and EPCRA violations that Complainant alleges occurred at facilities where Respondent manufactured or stored mortuary products that contained formaldehyde:

Cambridge, Massachusetts Facility

(a) *Failure to update and resubmit a risk management plan ("RMP")* for formaldehyde stored and used in Respondent's Cambridge, Massachusetts, *compounding process*, in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and implementing regulations at 40 C.F.R. Part 68.

(b) *Failure to develop and file an RMP* for formaldehyde stored in Respondent's Cambridge, Massachusetts, product *warehouse*, in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and implementing regulations at 40 C.F.R. Part 68.

(c) *Failure to develop a RMP management system* for formaldehyde stored and used in Respondent's Cambridge, Massachusetts, compounding and warehousing processes, in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and implementing regulations at 40 C.F.R. Part 68;

(d) *Failure to complete and/or timely update a hazard assessment* for formaldehyde stored and used in Respondent's Cambridge, Massachusetts, compounding and warehousing processes, in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and implementing regulations at 40 C.F.R. Part 68;

(e) *Failure to implement certain elements of a "Program 3" chemical release prevention program* for formaldehyde stored and used in Respondent's Cambridge, Massachusetts, compounding and warehousing processes, in violation of

Section112(r) of the CAA, 42 U.S.C. § 7412(r), and implementing regulations at 40 C.F.R. Part 68, including:

i. Failure to compile process safety information and document that equipment met recognized and generally accepted good engineering practices;

ii. Failure to identify and evaluate process hazards;

iii. Failure to fully develop and implement operating procedures;

iv. Failure to comply with training requirements;

v. Failure to comply with mechanical integrity requirements; and

vi. Failure to fully conduct periodic compliance audits;

Product Warehouses in Illinois, Texas, and California

(f) *Failure to develop and submit RMPs* for formaldehyde storage in Respondent's product warehouses, located in Batavia, Illinois; Fort Worth, Texas; and Fontaine, California, in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and implementing regulations at 40 C.F.R. Part 68; and

(g) *Failure to timely submit hazardous chemical inventory forms* to the proper authorities, in violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a) and implementing regulations at 40 C.F.R. Part 370.

II. APPLICABLE STATUTES AND REGULATIONS

A. CAA Statutory and Regulatory Authority

2. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), authorizes EPA to promulgate regulations and programs in order to prevent and minimize the consequences of accidental releases of certain regulated substances. Specifically, Section 112(r)(3) of the CAA, 42 U.S.C.

§ 7412(r)(3), mandates that EPA promulgate a list of substances that are known to cause or may reasonably be anticipated to cause death, injury or serious adverse effects to human health or the environment if accidentally released. Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), requires that EPA establish for each regulated substance the threshold quantity over which an accidental release is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health. Finally, Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires EPA to promulgate requirements for the prevention, detection and correction of accidental releases of regulated substances. One of the requirements of Section 112(r)(7), 42 U.S.C. § 7412(r)(7), is that owners or operators of certain stationary sources prepare and implement an RMP.

3. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), renders it unlawful for any person to operate a stationary source subject to the regulations promulgated under the authority of Section 112(r) of the CAA, 42 U.S.C. §7412(r), in violation of such regulations.

4. The regulations promulgated pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), are found at 40 C.F.R. Part 68.

5. Forty C.F.R. § 68.130 lists the substances regulated under Part 68 and their associated threshold quantities ("RMP chemicals" or "regulated substances") in accordance with the requirements of Section 112(r)(3) and (7) of the CAA, 42 U.S.C. § 7412(r)(3) and (7).

6. Under 40 C.F.R. § 68.10, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with the requirements of Part 68 by no later than the latest of the following dates: (a) June 21, 1999; (b) three years after the date on which a regulated substance is first listed under 40 C.F.R.§

68.130; or (c) the date on which a regulated substance is first present above a threshold quantity in a process.

7. Each process in which a regulated substance is present in more than a threshold quantity ("covered process") is subject to one of three risk management programs. Program 1 is the least comprehensive, and Program 3 is the most comprehensive. Pursuant to 40 C.F.R. § 68.10(b), a covered process is subject to Program 1 if, among other things, the distance to a toxic or flammable endpoint for a worst-case release assessment is *less* than the distance to any public receptor. Under 40 C.F.R. § 68.10(d), a covered process is subject to Program 3 if the process does not meet the eligibility requirements for Program 1 and is either in a specified NAICS code or subject to the Occupational Safety and Health Administration ("OSHA") process safety management standard at 29 C.F.R. § 1910.119. Forty C.F.R. § 68.10(c) prescribes that a covered process that meets neither Program 1 nor Program 3 eligibility requirements is subject to Program 2.

8. Forty C.F.R. § 68.12 mandates that the owner or operator of a stationary source subject to the requirements of Part 68 submit an RMP to EPA, as provided in 40 C.F.R. § 68.150. The RMP documents compliance with Part 68 in a summary format. For example, the RMP for a Program 3 process documents compliance with the elements of a program 3 Risk Management Program, including 40 C.F.R. § 68.12 (General Requirements); 40 C.F.R. § 68.15 (Management System to Oversee Implementation of RMP); 40 C.F.R. Part 68, Subpart B (Hazard Assessment to Determine Off-Site Consequences of a Release); 40 C.F.R. Part 68, Subpart D (Program 3 Prevention Program, including the Program 3 components listed in paragraphs 1(e) above and 34 below; and 40 C.F.R. Part 68, Subpart E (Emergency Response Program).

9. Additionally, 40 C.F.R. § 68.190(b) requires that the owner or operator of a stationary source must revise and update the RMP submitted to EPA at least once every five years from the date of its initial submission or most recent update. Other aspects of the prevention program must also be periodically updated. For example, for Program 2 and 3 processes, process hazard analyses and reviews must be conducted at least once every five years, pursuant to 40 C.F.R. §§ 68.67 and 68.50.

10. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), as amended by EPA's 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, provide for the assessment of civil penalties for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in amounts up to $32,500 per day for violations occurring between March 15, 2004 and January 12, 2009, and up to $37,500 per day for violations occurring after January 12, 2009.

11. EPA and the U.S. Department of Justice have jointly determined that this action is an appropriate administrative penalty action under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1).

B. EPCRA Statutory and Regulatory Authority

12. In accordance with Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), owners and operators of facilities that are required to prepare or have available material safety data sheets ("MSDSs") for hazardous chemicals under OSHA ("hazardous chemicals" or "hazardous chemicals under OSHA") must prepare and submit an emergency and hazardous chemical

inventory form ("Tier I" or "Tier II" form) to the local emergency planning committee ("LEPC"), the state emergency response commission ("SERC"), and the local fire department. Tier I or Tier II forms must be submitted annually on or before March 1 and are required to contain chemical inventory information with respect to the preceding calendar year. Additionally, Section 312(b) of EPCRA, 42 U.S.C. § 11022(b), authorizes EPA to establish minimum threshold levels of hazardous chemicals for the purposes of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

13. The regulations promulgated pursuant to Section 312 of EPCRA, 42 U.S.C. § 11022, are found at 40 C.F.R. Part 370. EPA promulgated new regulations to implement Section 312 of EPCRA on November 30, 2008 (73 Fed. Reg. 65478), but the substantive requirements relevant to the violations alleged herein did not change. Hereinafter, this CAFO cites the current version of the applicable 40 C.F.R. Part 370 regulations with cross references to the citations that were in effect at the time of some of the alleged violations.

14. In accordance with Section 312(b) of EPCRA, 42 U.S.C. § 11022(b), 40 C.F.R. § 370.10 (formerly § 370.20(b)) establishes minimum threshold levels for hazardous chemicals for the purposes of Part 370.

15. Under 40 C.F.R. §§ 370.10, 370.20, 370.40, 370.44, and 370.45 (formerly §§ 370.20 and 370.25), the owner or operator of a facility that has present a quantity of a hazardous chemical exceeding the minimum threshold level must prepare and submit a Tier I or Tier II form to the LEPC, SERC and local fire department. Forty C.F.R. § 370.45 (formerly § 370.25(a)) prescribes that Tier I or Tier II forms must be submitted annually on or before March 1 and are required to contain chemical inventory information with respect to the preceding calendar year. The LEPC, SERC or local fire department may request that a facility submit the more

comprehensive Tier II form in lieu of the Tier 1 form. Massachusetts, Illinois, and Texas require the Tier II form. California requires submission of California Hazardous Material Inventory Forms #2730 and #2731, which EPA has deemed meets the requirements of EPCRA Section 312.

16. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by EPA's 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, provides for the assessment of civil penalties for violations of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), in amounts of up to $32,500 per day for violations occurring between March 15, 2004 and January 12, 2009, and up to $37,500 per day for violations occurring after January 12, 2009.

III. GENERAL ALLEGATIONS

A. Cambridge, Massachusetts Facility

17. At the time of the alleged violations, Respondent operated a facility located at 165 and 181 Cambridgepark Drive in Cambridge, Massachusetts (the "Massachusetts Facility"), where Respondent blended, packaged, stored, and sold embalming chemicals and other funerary products. Respondent stored and used formaldehyde, isopropanol and methanol, among other chemicals, in its operations.

18. The Massachusetts Facility was located in a business park near offices, a daycare, restaurants, residential buildings, and Alewife Station, a Massachusetts Bay Transit Authority transportation center.

19. Respondent is a corporation organized under the laws of the Commonwealth of Massachusetts. As a corporation, Respondent is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), against whom an administrative order assessing a civil penalty may be issued under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1). Additionally, Respondent is a "person" within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), 40 C.F.R. § 370.66 (formerly § 370.2), against whom a civil penalty may be assessed under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c).

20. At the time of the violations alleged herein, Respondent was the operator of a "stationary source" in Massachusetts, as the term "stationary source" is defined at Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

21. Until early 2011, Respondent used and stored formaldehyde in the bulk filling, blending and bottling operation at the Massachusetts Facility ("compounding process"). In early 2011, Respondent outsourced compounding operations involving formaldehyde but continued to maintain a warehouse at the Massachusetts Facility where it stored formaldehyde-containing products.

22. Formaldehyde is an RMP Chemical listed at 40 C.F.R. § 68.130, having a threshold quantity of 15,000 pounds. In accordance with 40 C.F.R. Parts 355 and 370, it is also a chemical subject to EPCRA's chemical inventory reporting requirements when present in a quantity of 500 pounds or more.

23. On January 6, 2010, EPA conducted an inspection at the Massachusetts Facility to determine its compliance with Section 112(r) of the CAA, 42 U.S.C. 7412(r), and EPCRA. EPA also performed a follow-up inspection at the Massachusetts Facility on January 8, 2010. The

January 6 and 8 inspections are hereinafter referred to collectively as "EPA's January 2010 inspection."

24. At the time of EPA's January 2010 inspection, the Massachusetts Facility housed approximately 5,000 gallons, or about 45,000 pounds, of a 37% formaldehyde solution in one bulk tank. That tank was interconnected with other mixing vessels in the compounding process that contained formaldehyde (the "interconnected system").

25. At the time of inspection, Respondent also warehoused embalming chemicals containing formaldehyde at the Massachusetts Facility (the "warehousing process") in quantities which exceeded the threshold quantity under 40 C.F.R. § 68.130.

26. The storage of more than 15,000 pounds of formaldehyde in the compounding process at the Massachusetts Facility rendered that process a "covered process" as that term is defined in 40 C.F.R. § 68.3. Likewise, the storage of more than 15,000 pounds of formaldehyde in the warehouse rendered the warehousing process a "covered process."

27. Respondent stored formaldehyde in excess of threshold quantities in the compounding process from at least 1999 to early 2011. Likewise, Respondent stored formaldehyde in excess of threshold quantities in the warehousing process from at least 2004 to 2012. According to Respondent, in early 2013, Respondent moved its offices from Cambridge to Billerica, Massachusetts, and ceased warehousing formaldehyde-based products in Massachusetts.

28. The endpoint for a worst case release of formaldehyde at the Massachusetts Facility from the compounding process was, at all times relevant to the alleged violations, greater than the distance to a public receptor. Likewise the endpoint for a worst-case release of

formaldehyde from the Massachusetts Facility's warehousing process was greater than the distance to a public receptor.

29. Storage of formaldehyde solution with a formaldehyde concentration of 37% or greater is subject to OSHA's project safety management ("PSM") requirements at 29 C.F.R. § 1910.119 if at least 1,000 pounds of such solution is present in a process.

30. As the operator of a stationary source that held more than the threshold amount of a regulated substance in the compounding "covered process," Respondent was subject to the RMP requirements of Part 68 for the compounding process until that process shut down in 2011. Likewise, as the operator of a stationary source that held more than the threshold amount of a regulated substance in the warehousing "covered process," Respondent was subject to the RMP requirements of Part 68 for the warehousing process.

31. In accordance with 40 C.F.R. § 68.10(a)-(d), Respondent's *compounding* process at the Massachusetts Facility was subject to the requirements of RMP Program 3. The covered process was subject to Program 3 because (1) the distance to a toxic or flammable endpoint for a worst-case release of formaldehyde was more than the distance to a public receptor, making the processes ineligible for Program 1; and (2) the process was subject to OSHA's PSM regulations.

32. Likewise, in accordance with 40 C.F.R. § 68.10(a)-(d), the *warehousing* process at the Massachusetts Facility was subject to the requirements of RMP Program 3. This covered process was subject to Program 3 because (1) the distance to a toxic or flammable endpoint for a worst-case release of formaldehyde was more than the distance to a public receptor, making the processes ineligible for Program 1; and (2) the process was subject to OSHA's PSM regulations.

33. In 1999, Respondent submitted a Program 3 RMP for the *compounding* process at the Massachusetts Facility, which Respondent updated on June 22, 2004. As of EPA's

January 2010 inspection, Respondent had not yet submitted its five-year (i.e., 2009) update to the RMP. Nor had it submitted an RMP for the *warehousing* process.

34. During EPA's January 2010 inspection, an EPA inspector asked Respondent questions from the "RMP Program Level 3 Process Checklist" (the "Checklist") to ascertain Respondent's compliance with the following Program 3 components at the Massachusetts Facility's *compounding* process:

a. Five-Year Accident History [40 C.F.R. § 68.42(b)]

b. Process Safety Information [40 C.F.R. § 68.65]

c. Process Hazard Analysis [40 C.F.R. § 68.67]

d. Operating Procedures [40 C.F.R. § 68.69]

e. Training [40 C.F.R. § 68.71]

f. Mechanical Integrity [40 C.F.R. § 68.73]

g. Management of Change [40 C.F.R. § 68.75]

h. Pre-Startup Safety Review [40 C.F.R. § 68.77]

i. Compliance Audit [40 C.F.R. § 68.79]

j. Incident Investigation [40 C.F.R. § 68.81]

k. Employee Participation [40 C.F.R. § 68.83]

l. Hot Work Permit [40 C.F.R. § 68.85]

m. Contractors [40 C.F.R. § 68.87]

Respondent's responses indicated that, at the time of inspection, Respondent did not have most of the above program elements in place for the compounding process, although it was working on developing some of them.

35. During the inspection, EPA inspectors observed some potentially dangerous chemical management practices related to the compounding process at the Massachusetts Facility, including, among others, formaldehyde tanks insecurely fastened to the ground, unprotected PVC piping located near the floor that could inadvertently be stepped on and broken, some insufficiently labeled shut-off valves and piping on tanks 5-9 (although most piping and valves were appropriately labeled), an unstable base on tank 9, which needed shims to keep it level, lack of gauges on tanks A and B to indicate when the tanks were full, lack of adequate secondary containment due to cracks in floor and gaps between floor and walls, lack of automatic vapor sensors to detect flammable and toxic fumes, and lack of emergency lighting and ventilation in the event of a power outage. EPA also observed other potentially dangerous chemical management practices related to non-formaldehyde processes at the Massachusetts Facility, particularly in the flammables storage room.

36. After the inspection, Dodge continued to develop the program elements listed above, and was cooperative in working with EPA on coming into compliance with RMP requirements.

37. Respondent submitted an updated RMP summary to EPA Headquarters, covering both compounding and warehousing processes as Program 3 process, on September 21, 2010, more than fourteen months after an updated RMP was required for the compounding process under 40 C.F.R. § 68.190, and many years after an initial RMP was required for the warehousing process.

38. On or about September 29, 2010, EPA issued a CAA Notice of Violation, Administrative Order, and Reporting Requirement ("NOV/AO/RR") to Respondent, citing violations of CAA Sections 112(r)(1) (commonly known as "the General Duty Clause") and

112(r)(7) (the RMP requirements). The NOV/AO/RR summarized some of the RMP deficiencies and potentially dangerous conditions observed by the EPA inspectors; requested additional information regarding compliance with applicable RMP requirements; ordered Respondent to certify and document its compliance with applicable RMP requirements; and ordered Respondent to conduct a hazard analysis of extremely hazardous substances present at the Massachusetts Facility *other* than formaldehyde.

39. During a meeting held on November 8, 2010 to discuss the NOV/AO/RR, Respondent explained how it had addressed certain of the potentially dangerous conditions listed in paragraph 35 above and also contested some of EPA's findings about such conditions. Respondent documented its response to EPA's findings and explained how it had fixed some of the problems found at the facility in a December 2010 report entitled *Response to Allegations*.

40. On or about November 12, 2010, Respondent provided EPA with its updated Risk Management Plan and Process Safety Management Manual ("November 12, 2010 submission"). The November 12, 2010 submission indicated that both compounding and warehousing processes at the Massachusetts Facility were subject to Program 3 requirements under 40 C.F.R. Part 68 and included documentation showing that Respondent was coming into compliance with RMP requirements.

41. On February 14, 2011, Respondent submitted a process hazard analysis of *non-formaldehyde* extremely hazardous substances, in accordance with the requirements of the NOV/AO/RR, along with a schedule for addressing some of the issues identified. Shortly thereafter, Respondent provided responses to EPA's information request on or about March 3, 2011 ("March 3, 2011 submission").

42. Respondent's March 3, 2011 submission indicates that formaldehyde was present in the Massachusetts Facility in the following quantities during the years 2006-2010: 260,000 pounds in 2006; 224,000 pounds in 2007; 266,000 pounds in 2008; 220,324 pounds in 2009; and 220,324 pounds in 2010.

43. Respondent resubmitted a revised RMP summary to EPA Headquarters on September 29, 2011 and a revised RMP Manual to EPA Region 1 in October of 2011 to, among other things, reflect that Respondent no longer operated the compounding process at the Massachusetts Facility.

B. Illinois, Texas and California Facilities

44. During the course of investigating compliance at Respondent's Massachusetts Facility, EPA learned that Respondent had distribution centers and warehouses for formaldehyde-containing mortuary products in other states. Specifically, Respondent operates distribution centers and warehouses located at:

a) 2650 Suffolk Drive, Fort Worth, Texas ("Texas Facility");

b) 1550 Beach Street, Batavia, Illinois ("Illinois Facility"); and

c) 15060 Hilton Drive, Fontana, California ("California Facility").

45. For each of the facilities listed in paragraph 44, Respondent is the operator of a "stationary source," as that term is defined at Section 112(r)(2)(C), 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3, and of a "facility," as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), 40 C.F.R. § 370.66.

46. Respondent reviewed its compliance with RMP and EPCRA requirements at its Texas, Illinois and California Facilities and, on October 7, 2011, answered some questions that EPA had posed to Respondent about such facilities.

47. Respondent discovered that the Texas, Illinois and California Facilities should, but did not have, RMP plans for storage of formaldehyde in excess of regulatory threshold quantities. For example:

a. In 2011, the **Illinois Facility** stored approximately 30,000 pounds of formaldehyde in one warehouse. This facility has been in operation since at least 2006 and has had over the RMP and EPCRA threshold quantities of formaldehyde since then.

b. In 2011, the **Texas Facility** stored approximately 20,000 pounds of formaldehyde in one warehouse. This facility has been in operation since at least 2006 and has had over the RMP and EPCRA threshold quantities of formaldehyde since then.

c. In 2011, the **California Facility** stored approximately 30,350 pounds of formaldehyde in one room. This facility has been in operation since at least 2006 and has had over the RMP and EPCRA threshold quantities of formaldehyde since then.

48. The storage of more than 15,000 pounds of formaldehyde at each warehouse in Texas, Illinois, and California is a "covered process" as that term is defined in 40 C.F.R. § 68.3.

49. As the operator of stationary sources that each hold more than the threshold amount of a regulated substance in a covered process, Respondent is subject to the RMP requirements of Part 68 for its storage of formaldehyde at the Texas, Illinois and California facilities.

50. The endpoint for a worst case release of formaldehyde at each of the Texas, Illinois and California Facilities is greater than the distance to a public receptor.

51. According to Respondent, the storage of formaldehyde-containing products in the Texas, Illinois, and California Facilities is not subject to OSHA's PSM requirements at 29 C.F.R. § 1910.119.

52. Respondent submitted RMP Plans for the Texas, and Illinois Facilities to EPA on or about March 3, 2011, and for the California Facility on or about October 6, 2011. Each of these RMP Plans were submitted in accordance with the requirements of the RMP Program 2.

53. Respondent submitted Program 2 RMPs for the warehousing processes at the Texas, Illinois, and California Facilities because (1) the distance to a toxic or flammable endpoint for a worst-case release of formaldehyde was calculated to be more than the distance to a public receptor, making the processes ineligible for Program 1; and (2) the processes are not subject to OSHA's PSM regulations.

54. However, because the formaldehyde was packaged in plastic containers (with the exception of only a few glass containers at the Illinois Facility), each of the Texas, Illinois, and California Facilities actually may be subject only to the requirements of RMP Program 1, and not to the requirements of RMP Program 2. This is because the packaging may reduce the distance to a toxic or flammable endpoint associated with dropping or piercing a box containing many bottles of formaldehyde-based product. In addition, Dodge was communicating with each of the local fire departments at each of the Facilities. Dodge submits that it complied with all California state requirements for formaldehyde storage and in December 2006 prepared and submitted to EPA an RMP for the California Facility, but the RMP could not be processed by EPA's computer system.

55. In 2010, Respondent also assessed its compliance with EPCRA at the Texas, Illinois, and California Facilities and found some violations (see Section IV. B. of this CAFO).

IV. VIOLATIONS

A. Massachusetts Facility

Count One: Failure to Update and Resubmit RMP for the *Compounding Process*

56. Complainant realleges and incorporates by reference paragraphs 1 through 55 of this document.

57. Pursuant to 40 C.F.R. § 68.190(b), the owner or operator of a stationary source must revise and update the RMP submitted to EPA at least once every five years from the date of its initial submission or the most recent update. Sections 68.150-68.185 set out the required elements of the RMP and RMP update.

58. Respondent's RMP update was due on June 22, 2009, five years after its June 22, 2004 update. Respondent failed to timely update and resubmit a Program 3 RMP for the formaldehyde stored and used in the Massachusetts Facility's compounding process after its previous registration had expired. Upon request by EPA inspectors, Respondent was unable to provide written components of its RMP for formaldehyde at the time of inspection.

59. By failing to re-submit an RMP for formaldehyde, Respondent was in violation of 40 C.F.R. § 68.190(b) and Section 112(r)(7)(e) of the CAA, 42 U.S.C. § 7412(r)(7)(e), from at least June 22, 2009 to September 21, 2010.

Count Two: Failure to Submit a RMP for Formaldehyde in *Warehousing* Process

60. Complainant realleges and incorporates by reference paragraphs 1 through 59 of this document.

61. Pursuant to 40 C.F.R. § 68.150(a), the owner or operator of a stationary source must submit an RMP to EPA that includes information on *all* covered processes. Under 40 C.F.R. § 68.190(b), an owner or operator must update an RMP no later than the date on which a regulated substance is first present above a threshold quantity in a new process and every five years thereafter. Forty C.F.R. §§ 68.150-68.185 set out the required elements of the RMP.

62. From at least 2004 to at least 2011, Respondent stored formaldehyde in its warehousing process in quantities which exceeded the threshold quantity of 15,000 pounds. Pursuant to 40 C.F.R. § 68.10, 40 C.F.R. § 68.150, and 40 C.F.R. § 68.190, Respondent's RMP was required to include information on formaldehyde in its warehousing process to be complete and satisfy the RMP documentation requirements of 40 C.F.R. §§ 68.150-85.

63. Respondent did not include information on formaldehyde in its warehousing process in its RMPs submitted to EPA on or about June 21, 1999 and June 22, 2004. Respondent did not update its RMP to include information on formaldehyde in its warehousing process until on or about September 21, 2010.

64. By failing to include information regarding formaldehyde in the warehousing process in its RMP, Respondent violated 40 C.F.R. § 68.150(a), which requires submittal of a complete RMP for all processes, and 40 C.F.R. § 68.190(b), which requires revision and updating of such RMP at least every five years or when a regulated substance is first present

above a threshold quantity in a new process, and Section 112(r)(7)(e) of the CAA, 42 U.S.C. § 7412(r)(7)(e).

Count Three: Failure to Develop a Management System for RMP Implementation for both Compounding and Warehousing Processes

65. Complainant realleges and incorporates by reference paragraphs 1 through 64 of this document.

66. Pursuant to 40 C.F.R. 68.15, the owner or operator of a stationary source with processes subject to the Program 3 requirements of 40 C.F.R. Part 68 must develop a management system to oversee the implementation of risk management program elements.

67. In its NOV/AO/RR, EPA required Respondent to provide information about any management program it had put in place between September 30, 2005 and September 29, 2010 that would satisfy the requirements of 40 C.F.R. § 68.15. In its March 3, 2011 submission, Respondent produced no information about management systems in place before on or about November 12, 2010.

68. A review of Respondent's 1999 RMP Manual indicated that RMP compliance would be the responsibility of the Vice President of Manufacturing, but the 1999 RMP Manual did not describe the particulars of any management system. Respondent's 2002 RMP compliance audit concluded that the management system was partially incomplete, and management of the risk management system had lapsed by June 2, 2007, when Respondent failed to conduct a required three-year RMP compliance audit.

69. As discussed throughout this CAFO, Respondent violated many of the requirements of 40 C.F.R. Part 68. Respondent's failure to comply with applicable

regulations demonstrates that Respondent did not have a management system in place to effectively implement risk management program elements.

70. By failing to have a management system to oversee implementation of the risk management program, Respondent violated 40 C.F.R. § 68.15 and Section 112(r)(7)(e) of the CAA, 42 U.S.C. § 7412(r)(7)(e), from at least June 2, 2007 to November 12, 2010 for the compounding process and from at least 2004 to on or about November 12, 2010 for the warehousing process.

Count Four: Failure to Complete Hazard Assessment Scenarios for Warehousing Process and Timely Update Hazard Assessment Scenarios for Compounding Process

71. Complainant realleges and incorporates by reference paragraphs 1 through 70 of this document.

72. Pursuant to 40 C.F.R. Part 68, Subpart B, specifically §§ 68.10, 68.25, and 68.28, the owner or operator of a stationary source with a Program 3 process must perform a hazard assessment that, for each covered process, analyzes and reports a worst-case release scenario that estimates the endpoint of an accidental release of regulated toxic substances from the process under worst-case conditions. The assessment must also include at least one alternative release scenario for each regulated toxic substance held in a covered process. Pursuant to 40 C.F.R. § 68.36, these scenario analyses must be updated at least every five years and must also be updated within six months of any change in a stationary source that might reasonably be expected to increase or decrease the distance to an endpoint by a factor of two or more. Pursuant to 40 C.F.R. § 68.42, the owner or operator of a stationary source must also include a five-year accident history with its hazard assessment.

Forty C.F.R. § 68.39 requires maintenance of records pertaining to the off-site consequence analysis.

73. The hazard assessment that accompanied Respondent's June 22, 2004 RMP, did not include a worst-case scenario analysis for formaldehyde stored in Respondent's *warehousing* process. Assuming that a threshold quantity of formaldehyde first became present in the Massachusetts Facility's warehouse no later than December 30, 2004, pursuant to 40 C.F.R. §§ 68.20, 68.25, and 68.36, Respondent was required to perform a worst-case scenario analysis for its warehousing process no later than June 30, 2005. However, Respondent did not do so until on or about September 21, 2010, when Respondent submitted its RMP summary covering the warehouse process to EPA Headquarters.

74. The hazard assessment for Respondent's *compounding process,* which was updated on or about June 22, 2004, was due to be updated on June 22, 2009 but was not updated until on or about September 21, 2010, when Respondent submitted its RMP summary to EPA Headquarters.

75. By failing to update the hazard assessment for the compounding process and perform its initial hazard assessment for the warehousing process in a timely manner, Respondent violated 40 C.F.R. Part 68, Subpart B, and Section 112(r)(7)(e) of the CAA, 42 U.S.C. § 7412(r)(7)(e), from at least June 30, 2005 to September 21, 2010.

Count Five: Failure to Compile Process Safety Information for Both Compounding and Warehousing Processes and Document that Equipment Met Recognized and Generally Accepted Good Engineering Practices

76. Complainant realleges and incorporates by reference paragraphs 1 through 75 of this document.

77. Pursuant to 40 C.F.R. § 68.65, the owner or operator of a Program 3 process must complete a compilation of written process safety information before conducting the process hazard analysis required by 40 C.F.R. § 68.67. This compilation enables appropriate identification and understanding of hazards posed by regulated substances in the process and the technology and equipment of the process. Among other things, to comply with the process safety information requirements, the owner and operator must compile information on the hazards of regulated substances; the technology of the process; and the equipment involved in the process (including materials of construction, electrical classification, piping and instrument diagrams, ventilation system design, relief system design, and design codes and standards). The owner and operator must also document that the equipment complies with generally accepted good engineering practices. For existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use, the owner or operator must determine and document that the equipment is designed, maintained, inspected, tested, and operating in a safe manner.

78. As described in Paragraph 34 above, during EPA's January 2010 inspection, Respondent personnel orally responded to questions on the RMP Program Level 3 Process Checklist about the compounding process. The answers to the questions about 40 C.F.R. § 68.65 indicated that Respondent had not fully compiled process safety information for the compounding process.

79. Also, a review of Respondent's 1999 RMP indicated that the process safety information section for the compounding process was deficient because it did not include materials of construction, electrical classification, piping and instrument diagrams, ventilation system design, relief system design, safety systems (e.g., interlocks and vapor detection systems) and *specific* design codes and standards. Nor did it list all the equipment. Moreover, Respondent did not document that the equipment either currently complied with generally accepted good engineering practices, or for existing equipment designed and constructed in accordance with codes, standards, or practices that were no longer in general use, that the equipment was designed, maintained, inspected, tested, and operating in a safe manner. Respondent did not have updates to the process safety information section of the 1999 RMP Manual available, despite its determination during its 2002 RMP compliance audit that the process safety information was incomplete, until it submitted a new RMP manual on November 12 of 2010. Moreover, Respondent used equipment that was not compliant with generally accepted good engineering practices until it outsourced its compounding process on or about January 31, 2011.

80. Neither the 1999 RMP Manual or the 2004 RMP discussed process safety information for the *warehousing process*.

81. In its NOV/AO/RR, EPA required Respondent to provide information about its gathering of process safety information from September 30, 2005 to September 29, 2010 that would satisfy the requirements of 40 C.F.R. § 68.65. In its March 3, 2011 submission, Respondent produced no information indicating that it had fully complied with process safety information before November 12, 2010.

82. By failing to fully compile process safety information or document that the equipment complied with recognized and generally accepted engineering practices for the *compounding process* from at least 1999 to on or about January 31, 2011, Respondent violated 40 C.F.R. § 68.65 and Section 112(r)(7)(e) of the CAA, 42 U.S.C. § 7412(r)(7)(e). Likewise by failing to fully compile process safety information for the *warehousing process* from at least 2006 to on or about November 12, 2010, Respondent violated 40 C.F.R. § 68.65 and Section 112(r)(7)(e) of the CAA, 42 U.S.C. § 7412(r)(7)(e).

Count Six: Failure to Conduct Process Hazard Analysis for Both Compounding and Warehousing Processes

83. Complainant realleges and incorporates by reference paragraphs 1 through 82 of this document.

84. Pursuant to 40 C.F.R. § 68.67, the owner or operator of a Program 3 process is required to perform an initial process hazard analysis on covered processes. The process hazard analysis must identify, evaluate, and control the hazards involved in the process. Additionally, the owner or operator must update the process hazard analysis every five years and when a major change in the process occurs. Also, the owner or operator must comply with the documentation requirements of 40 C.F.R. § 68.67.

85. As described in Paragraph 34 above, during EPA's January 2010 inspection, Respondent personnel orally responded to questions on the RMP Program Level 3 Process Checklist. The answers to the questions about 40 C.F.R. § 68.67 indicated that, as of the date of EPA's inspection on January 6 and 8, 2010, Respondent did not have a process hazard analysis available.

86. Between March 10, 2010 and June 2, 2010, Respondent and its contractor completed a process hazard analysis ("2010 Process Hazard Analysis"). In its NOV/AO/RR, EPA required Respondent to provide information about any process hazard analysis the company had performed between September 30, 2005 and September 29, 2010 that would satisfy the requirements of 40 C.F.R. § 68.67. In its March 3, 2011 submission, Respondent produced no information indicating that it had completed a process hazard analysis before June of 2010.

87. As described in Paragraph 35 above, during EPA's January 2010 inspection, EPA inspectors observed potentially dangerous chemical storage practices at the Massachusetts Facility that showed a failure to identify hazards associated with the Program 3 compounding process.

88. Moreover, the 2010 Process Hazard Analysis indicated some additional major risks with the compounding process, such as the potential for fire or explosion resulting from buildup of flammable vapor and the introduction of a spark from sources such static discharge or non-rated electrical equipment. Examples include the electrical panels and the forklift used in the compounding room that were not rated for an environment where flammable vapors could accumulate and ignite. The July 2010 Process Hazard Analysis also determined that fiberglass storage and mixing tanks were not compliant with OSHA, National Fire Prevention Association ("NFPA"), or Massachusetts Fire Prevention requirements; the PVC piping used to dispense flammable/combustible liquids from the storage tanks to the mixing tanks was not compliant with OSHA, NFPA, or Massachusetts Fire Prevention requirements; fill meters on the formaldehyde and isopropanol tanks were not functioning properly; it was dangerous to check the fill levels

on steel tanks by having an employee do so with a yard stick rather than with mechanical devices; there were no regular inspection procedures to prevent tank failure; employees were not trained on the importance of only using non-sparking hand tools in the mixing area, where flammable chemicals were used; Lower-Explosive-Limit monitors with alarms should be installed; and that in several locations grounding/bonding systems needed to be installed or checked for flammable liquid dispensing processes to avoid fire or explosion from static discharge.

89. Finally, Respondent had not completed a process hazard analysis at all for the warehousing process from at least 2004 to June 2, 2010.

90. Accordingly, Respondent violated 40 C.F.R. § 68.67 and Section 112(r)(7)(e) of the CAA, 42 U.S.C. § 7412(r)(7)(e), from at least 1999 to June 2, 2010.

Count Seven: Failure to Comply with Program 3 Operating Procedures Requirements for the Compounding and Warehousing Processes

91. Complainant realleges and incorporates by reference paragraphs 1 through 90 of this document.

92. Pursuant to 40 C.F.R. § 68.69, the owner or operator of a Program 3 process is required to develop and implement written operating procedures that provide instructions or steps for safely conducting activities associated with the covered process. The owner or operator must also make these procedures available to employees who are involved in the process; update the procedures to reflect current operating practices; certify annually that the operating procedures are current; and implement safe work practices to control hazards during specific operations.

93. As described in Paragraph 34 above, Respondent personnel orally responded to questions on the RMP Program Level 3 Process Checklist during EPA's January 2010 inspection. The answers to the questions about 40 C.F.R. § 68.69 indicated that Respondent had not yet, as of the date of inspection, completed developing and implementing written operating procedures; made such procedures available to employees; or certified annually that the operating procedures were current.

94. In the 2010 NOV/AO/RR, EPA required Respondent to provide information about its development of written operating procedures between September 30, 2005 and September 29, 2010 that would satisfy the requirements of 40 C.F.R. § 68.69. In its March 3, 2011 submission, Respondent indicated that it had created and compiled some standard operating procedures and made them available to employees (such as for bulk delivery of formaldehyde and for blending room operations), but Respondent produced no information indicating that it had regularly updated or annually certified these procedures. Moreover, in its July 10, 2010 compliance audit, Respondent indicated that not all of the required elements of the operating procedures were addressed in the operating procedures; that they were not readily accessible to employees involved in a process; and that Respondent had not certified annually that the procedures were current.

95. Finally, operating procedures for the warehousing operation, which has been in operation since at least 2006, were not developed or available until on or about November 12, 2010.

96. Accordingly, Respondent violated 40 C.F.R. § 68.69 and Section 112(r)(7)(e) of the CAA, 42 U.S.C. § 7412(r)(7)(e), from at least 2004 to on or about November 12, 2010.

Count Eight: Failure to Comply with Program 3 Training Requirements for Both Compounding and Warehousing Processes

97. Complainant realleges and incorporates by reference paragraphs 1 through 96 of this document.

98. Pursuant to 40 C.F.R. § 68.71, the owner or operator of a Program 3 process must train each employee involved in operating a process, provide refresher training at least every three years, and document such training. The training shall include emphasis on specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks. Training documentation must record the date of the training and the means used to verify that employees understood the training. As described in Paragraph 34 above, during EPA's January 2010 inspection, Respondent personnel orally responded to questions on the RMP Program Level 3 Process Checklist. The answers to the questions about 40 C.F.R. § 68.71 indicated that Respondent was working on developing training that included an emphasis on safety and health hazards, emergency operations and safe work practices, and that Respondent had not yet, as of the date of inspection, completed refresher training or documented employee training.

99. In the NOV/AO/RR, EPA required Respondent to provide information about its training procedures between September 30, 2005 and September 29, 2010 that would satisfy the requirements of 40 C.F.R. § 68.71. In its March 3, 2011 submission, Respondent indicated that it did have some worker training programs in place during that time period. Respondent submitted records of some worker trainings, most occurring after May 2009 and none occurring before a fire extinguisher use training in March 31, 2009.

100. Furthermore, Respondent's 2002 RMP compliance audit found that compliance with all but one of the training requirements for the compounding process was

unknown. Respondent's July 2010 RMP compliance audit found that refresher training had not been provided every three years and that training records were deficient.

101. Respondent did not have a training program in place for the warehousing process at all until on or about November 12, 2010, when it submitted its RMP Manual.

102. Because it failed to adequately train and record compliance with training requirements, Respondent violated 40 C.F.R. § 68.71 and Section 112(r)(7)(e) of the CAA, 42 U.S.C. § 7412(r)(7)(e), from at least June 20, 2002, the date of the 2002 compliance audit, through on or about November 12, 2010.

Count Nine: Failure to Comply with Program 3 Mechanical Integrity Requirements

103. Complainant realleges and incorporates by reference paragraphs 1 through 102 of this document.

104. Pursuant to 40 C.F.R. § 68.73, the owner or operator of a Program 3 process must establish written procedures to maintain the ongoing integrity of certain process equipment; train employees in the hazards and procedures for maintaining the integrity of process equipment; inspect and test such equipment; follow generally accepted good engineering practices for inspections and testing procedures; document its inspections and tests; correct deficiencies in equipment before further use; assure that any new equipment is suitable for the process application; perform appropriate checks and inspections to ensure that equipment is installed properly; and assure that maintenance materials and spare parts are suitable for the process application.

105. As described in Paragraph 34 above, during EPA's January 12, 2010 inspection, Respondent personnel orally responded to questions on the RMP Program Level 3 Process Checklist. The answers to the questions about 40 C.F.R. § 68.73 indicated that

Respondent had not complied with the Program 3 mechanical integrity requirements, although testing and inspections of process equipment were in progress at the time of the inspection.

106. In the NOV/AO/RR, EPA required Respondent to provide information about any mechanical integrity programs between September 30, 2005 and September 29, 2010 that would satisfy the requirements of 40 C.F.R. § 68.73. With the exception of information about maintenance logs and occasional underground tank inspections, in its March 3, 2011 submission Respondent produced no information indicating that, as of the date of EPA's January 2010 inspection, it had established and implemented written, ongoing mechanical integrity procedures to ensure the safety of process equipment.

107. A review of the 1999 RMP Manual indicated that Respondent performed inspections and tests on chemical process equipment in accordance with ASTM accepted good engineering practices, but Respondent's 2002 RMP compliance audit found that the frequency of inspections and tests were unknown and that inspections were not documented. In Respondent's July 2010 RMP compliance audit, Respondent found that written mechanical integrity procedures, training, inspection records, records of deficiencies or corrections were not available for review and that the standard operating procedures did not address integrity testing/verification. For example, Respondent had no above-ground storage tank design information at the facility, which made it impossible to have a preventative maintenance program for those tanks and to document that the tanks complied with design codes. Respondent's contractor had to research all that information in order to conduct a full inspection of tanks and piping in 2010.

108. Among other things, during EPA's January 2010 inspection, EPA's inspectors found some improperly maintained tanks and tank supports, compromised secondary containment, and broken overflow detectors.

109. Also, Respondent's July 2010 Process Hazard Analysis revealed that that some overfill meters were not working and that there were no regular inspection procedures to prevent tank failure. Likewise, when Respondent's contractor inspected Respondent's tanks in 2010, the contractor found that, of the tanks that stored or contained formaldehyde in 2010, tanks 2 and 3 were unfit for service (at least one of these was not being used at the time of EPA's January 2010 inspection); that tanks 1, 4, 8, and 9 were not adequately supported; and that tank A had a cracked PVC flange than needed repair.

110. Respondent never submitted a mechanical integrity program for its warehousing process until November 12, 2010.

111. Accordingly, Respondent violated the mechanical integrity requirements of 40 C.F.R. § 68.73 and Section 112(r)(7)(e) of the CAA, 42 U.S.C. § 7412(r)(7)(e), from at least June 2002 to on or about November 12, 2010.

Count Ten: Failure to Comply with Program 3 Compliance Audit Requirements for both Compounding and Warehousing Processes

112. Complainant realleges and incorporates by reference paragraphs 1 through 111 of this document.

113. Pursuant to 40 C.F.R. § 68.79, the owner or operator of a Program 3 process must evaluate compliance with the provisions of the prevention program at least every three years; document the audit findings; promptly determine and document a response to each of

the findings of the audit; document that deficiencies have been corrected; and retain the two most recent compliance reports.

114. As described in paragraph 34 above, during EPA's January 2010 inspection, Respondent personnel orally responded to questions on the RMP Program Level 3 Process Checklist. The answers to the questions about 40 C.F.R. § 68.79 indicated that Respondent had not completed such compliance audits or retained the most recent compliance reports.

115. In the NOV/AO/RR, EPA required Respondent to provide information about any compliance audits it had performed between September 30, 2005 and September 29, 2010 that might meet the requirements of 40 C.F.R. § 68.79. In its March 3, 2011 submission, Respondent referenced only the compliance audit performed by Respondent's contractor from July 6-16 of 2010.

116. Respondent's November 2010 RMP Manual included another audit of the compounding process that was performed from June 20-26 of 2002.

117. Also, Respondent noted in its 2004 RMP update submittal, dated June 25, 2004, that a second compliance audit was completed on June 2, 2004, but no audit report or checklist was generated for this review other than the five-year submittal report. Accordingly, that audit did not meet the documentation standards of 40 C.F.R. § 68.79.

118. The next three-year audit should have been conducted on or before June 2, 2007, but there are no records available to indicate that this audit was ever completed.

119. Respondent never completed a three-year compliance audit for the warehousing process, for which it did not file an RMP until September 21, 2010.

120. Accordingly, Respondent violated 40 C.F.R. § 68.79 and Section 112(r)(7)(e) of the CAA, 42 U.S.C. § 7412(r)(7)(e), from at least June 2, 2004 to July 16, 2010, when Respondent's contractor sent Respondent the 2010 audit results.

B. Texas, Illinois, and California Facilities

Count Eleven: Failure to Submit a RMP for Formaldehyde in Texas Warehouse

121. Complainant realleges and incorporates by reference paragraphs 1 through 120 of this document.

122. As alleged in paragraphs 44-55, from at least 2006 to the present, Respondent has operated a warehouse in Texas where it stores formaldehyde-containing products. That warehouse is a "stationary source" with a "covered process" having more than the threshold amount of formaldehyde, an RMP chemical.

123. Pursuant to 40 C.F.R. §§ 68.10 and 68.12, Respondent was required to implement a Risk Management Program at the Texas Facility for the storage of formaldehyde in quantities over the 15,000 pound threshold.

124. Under 40 C.F.R. §§ 68.10(a), 68.12, and 68.150, Respondent was required to prepare and submit a RMP for formaldehyde documenting compliance with the RMP requirements before it began storing formaldehyde at the Texas Facility.

125. Respondent did not submit an RMP until on or about March 3, 2011.

126. By failing to submit the RMP for formaldehyde before storing it at the Texas Facility in amounts that exceeded the regulatory threshold, from at least 2006 to March 3, 2011, Respondent violated Section 112(r)(7)(e) of the CAA, 42 U.S.C. § 7412(r)(7)(e), and 40 C.F.R. §§ 68.10(a), 68.12 and 68.150.

Count Twelve: Failure to Submit a RMP for Formaldehyde in Illinois Warehouse

127. Complainant realleges and incorporates by reference paragraphs 1 through 126 of this document.

128. As alleged in paragraphs 44-55, from at least 2006 to the present, Respondent has operated a warehouse in Illinois where it stores formaldehyde-containing products. That warehouse is a "stationary source" with a "covered process" having more than the threshold amount of formaldehyde, an RMP chemical.

129. Pursuant to 40 C.F.R. §§ 68.10 and 68.12, Respondent was required to implement a Risk Management Program at the Illinois Facility for the storage of formaldehyde in quantities over the 15,000 pound threshold.

130. Under 40 C.F.R. §§ 68.10(a), 68.12, and 68.150, Respondent was required to prepare and submit a RMP for formaldehyde documenting compliance with the RMP requirements before it began storing formaldehyde at the Illinois Facility.

131. Respondent did not submit an RMP until on or about March 3, 2011.

132. By failing to submit the RMP for formaldehyde before storing it at the Illinois Facility in amounts that exceeded the regulatory threshold, from at least 2006 to March 3, 2011, Respondent violated Section 112(r)(7)(e) of the CAA, 42 U.S.C. § 7412(r)(7)(e), and 40 C.F.R. §§ 68.10(a), 68.12 and 68.150.

Count Thirteen: Failure to Submit a RMP for Formaldehyde in California Warehouse

133. Complainant realleges and incorporates by reference paragraphs 1 through 132 of this Document.

134. As alleged in paragraphs 44-55, from at least 2006 to the present, Respondent has operated a warehouse in California where it stores formaldehyde-containing products.